

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE SUBSTITUTE
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FOR
HOUSE BILL NO. 1304

AN ACT

To repeal sections 355.176, 408.040, 508.010, 508.040, 508.070, 508.120, 510.263, 516.105, 537.067, 538.205, 538.210, 538.220, 538.225, and 538.300, RSMo, and to enact in lieu thereof sixteen new sections relating to claims for damages and the payment thereof.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 355.176, 408.040, 508.010, 508.040,
2 508.070, 508.120, 510.263, 516.105, 537.067, 538.205, 538.210,
3 538.220, 538.225, and 538.300, RSMo, are repealed and sixteen new
4 sections enacted in lieu thereof, to be known as sections
5 355.176, 408.040, 508.010, 510.263, 516.105, 537.067, 538.205,
6 538.210, 538.213, 538.220, 538.225, 538.227, 538.300, 1, 2, and
7 3, to read as follows:

8 355.176. 1. A corporation's registered agent is the
9 corporation's agent for service of process, notice, or demand
10 required or permitted by law to be served on the corporation.

11 2. If a corporation has no registered agent, or the agent

1 cannot with reasonable diligence be served, the corporation may
2 be served by registered or certified mail, return receipt
3 requested, addressed to the secretary of the corporation at its
4 principal office shown in the most recent annual report filed
5 pursuant to section 355.856. Service is perfected under this
6 subsection on the earliest of:

7 _____ (1) The date the corporation receives the mail;

8 _____ (2) The date shown on the return receipt, if signed on
9 behalf of the corporation; or

10 _____ (3) Five days after its deposit in the United States mail,
11 if mailed and correctly addressed with first class postage
12 affixed.

13 _____ 3. This section does not prescribe the only means, or
14 necessarily the required means, of serving a corporation.

15 408.040. 1. Interest shall be allowed on all money due
16 upon any judgment or order of any court from the day of rendering
17 the same until satisfaction be made by payment, accord or sale of
18 property; all such judgments and orders for money upon contracts
19 bearing more than nine percent interest shall bear the same
20 interest borne by such contracts, and, except as provided by
21 subsection 3 of this section, all other judgments and orders for
22 money shall bear nine percent per annum until satisfaction made
23 as aforesaid.

24 2. In tort actions, if a claimant has made a demand for
25 payment of a claim or an offer of settlement of a claim, to the
26 party, parties or their representatives, and to such party's
27 liability insurer if known to the claimant, and the amount of the
28 judgment or order exceeds the demand for payment or offer of

1 settlement, then prejudgment interest, [at the rate specified in
2 subsection 1 of this section,] shall be awarded, calculated from
3 a date [sixty] ninety days after the demand or offer was [made]
4 received, as shown by the certified mail return receipt, or from
5 the date the demand or offer was rejected without counter offer,
6 whichever is earlier. [Any such demand or offer shall be made in
7 writing and sent by certified mail and shall be left open for
8 sixty days unless rejected earlier.] In order to qualify as a
9 demand or offer pursuant to this section, such demand must:

10 (1) Be in writing and sent by certified mail return receipt
11 requested; and

12 (2) Be accompanied by an affidavit of the claimant
13 describing the nature of the claim and theory of liability, the
14 nature of any injuries claimed and a computation of any category
15 of damages sought by the claimant with supporting documentation;
16 and

17 (3) For personal injury and bodily injury claims, be
18 accompanied by a list of the names and addresses of medical
19 providers who have provided treatment to the claimant for such
20 injuries, copies of all medical bills, a list of employers if the
21 claimant is seeking damages for loss of wages or earnings, and
22 written authorizations sufficient to allow the party, its
23 representatives, and liability insurer if known to the claimant
24 to obtain records from all employers and medical care providers;
25 and

26 (4) Reference this section and be left open for ninety
27 days.

28 If the claimant fails to file a cause of action in circuit court

1 within thirty days after the expiration of ninety days as
2 provided in subdivision (4) of this subsection, then the court
3 shall not award prejudgment interest to the claimant. If the
4 claimant is a minor or incompetent or deceased, the affidavit may
5 be signed by any person who reasonably appears to be qualified to
6 act as next friend or conservator or personal representative. If
7 the claim is one for wrongful death, the affidavit may be signed
8 by any person qualified pursuant to section 537.080, RSMo, to
9 make claim for the death. The trial court, in its discretion,
10 shall determine whether prejudgment interest is awarded. Nothing
11 contained herein shall limit the right of a claimant, in actions
12 other than tort actions, to recover prejudgment interest as
13 otherwise provided by law or contract.

14 3. Notwithstanding the provisions of subsection 1 of this
15 section, in tort actions, a judgment for prejudgment interest
16 awarded pursuant to subsection 2 of this section should bear
17 interest at a per annum interest rate equal to the Federal Funds
18 Rate, as established by the Federal Reserve Board, plus five
19 percent. A judgment awarded for post judgment interest should
20 bear interest at a per annum interest rate equal to the Federal
21 Funds Rate, as established by the Federal Reserve Board, plus
22 seven percent. The judgment shall state the applicable interest
23 rate.

24 508.010. [Suits instituted by summons shall, except as
25 otherwise provided by law, be brought] 1. As used in this
26 section, "principal place of residence" shall mean the county
27 which is the main place where an individual resides in the state
28 of Missouri. There shall be a rebuttable presumption that the

1 county of voter registration is the principal place of residence.
2 There shall be only one principal place of residence.

3 2. In all actions in which there is no count alleging a
4 tort, venue shall be determined as follows:

5 (1) When the defendant is a resident of the state, either
6 in the county within which the defendant resides, or in the
7 county within which the plaintiff resides, and the defendant may
8 be found;

9 (2) When there are several defendants, and they reside in
10 different counties, the suit may be brought in any such county;

11 (3) When there are several defendants, some residents and
12 others nonresidents of the state, suit may be brought in any
13 county in this state in which any defendant resides;

14 (4) When all the defendants are nonresidents of the state,
15 suit may be brought in any county in this state[;

16 (5) Any action, local or transitory, in which any county
17 shall be plaintiff, may be commenced and prosecuted to final
18 judgment in the county in which the defendant or defendants
19 reside, or in the county suing and where the defendants, or one
20 of them, may be found;

21 (6) In all tort actions the suit may be brought in the
22 county where the cause of action accrued regardless of the
23 residence of the parties, and process therein shall be issued by
24 the court of such county and may be served in any county within
25 the state; provided, however, that in any action for defamation
26 or for invasion of privacy the cause of action shall be deemed to
27 have accrued in the county in which the defamation or invasion
28 was first published]_.

1 3. Tort actions shall include claims based upon improper
2 health care.

3 4. Notwithstanding any other provision of law in all
4 actions in which there is any count alleging a tort and in which
5 the cause of action accrued in the state of Missouri, venue shall
6 be in any county within the judicial circuit where the cause of
7 action accrued.

8 5. Notwithstanding any other provision of law, in all
9 actions in which there is any count alleging a tort and in which
10 the cause of action accrued outside the state of Missouri, venue
11 shall be determined as follows:

12 (1) If the defendant is a corporation, then venue shall be
13 in any county within the judicial circuit where a corporation's
14 registered agent is located or, if there are one or two
15 plaintiffs properly joined and either of the plaintiff's
16 principal place of residence was in the state of Missouri on the
17 date the cause of action accrued, in any county within the
18 judicial circuit of a plaintiff's principal place of residence on
19 the date the cause of action accrued;

20 (2) If the defendant is an individual, then venue may be in
21 any county within the judicial circuit of the individual's
22 principal place of residence in the state of Missouri or, if
23 there are one or two plaintiffs properly joined and either of the
24 plaintiff's principal place of residence was in the state of
25 Missouri on the date the cause of action accrued, in any county
26 within the judicial circuit of a plaintiff's principal place of
27 residence on the date the cause of action accrued.

28 6. Any action, local or transitory, in which any county

1 shall be plaintiff, may be commenced and prosecuted to final
2 judgment in the county in which the defendant or defendants
3 reside, or in the county suing and where the defendants, or one
4 of them, may be found.

5 7. In all actions process therein shall be issued by the
6 court of such county and may be served in any county within the
7 state.

8 8. In any action for defamation or for invasion of privacy,
9 the cause of action shall be deemed to have accrued in the county
10 in which the defamation or invasion was first published.

11 9. In all actions, venue shall be determined as of the date
12 the cause of action accrued.

13 10. All motions to dismiss or to transfer based upon a
14 claim of improper venue shall be deemed granted if not denied
15 within ninety days of filing of the motion unless such time
16 period is waived in writing by all parties.

17 510.263. 1. All actions tried before a jury involving
18 punitive damages, including tort actions based upon improper
19 health care, shall be conducted in a bifurcated trial before the
20 same jury if requested by any party.

21 2. In the first stage of a bifurcated trial, in which the
22 issue of punitive damages is submissible, the jury shall
23 determine liability for compensatory damages, the amount of
24 compensatory damages, including nominal damages, and the
25 liability of a defendant for punitive damages. Evidence of
26 defendant's financial condition shall not be admissible in the
27 first stage of such trial unless admissible for a proper purpose
28 other than the amount of punitive damages.

1 3. If during the first stage of a bifurcated trial the jury
2 determines that a defendant is liable for punitive damages, that
3 jury shall determine, in a second stage of trial, the amount of
4 punitive damages to be awarded against such defendant. Evidence
5 of such defendant's net worth shall be admissible during the
6 second stage of such trial.

7 4. Within the time for filing a motion for new trial, a
8 defendant may file a post-trial motion requesting the amount
9 awarded by the jury as punitive damages be credited by the court
10 with amounts previously paid by the defendant for punitive
11 damages arising out of the same conduct on which the imposition
12 of punitive damages is based. At any hearing, the burden on all
13 issues relating to such a credit shall be on the defendant and
14 either party may introduce relevant evidence on such motion.
15 Such a motion shall be determined by the trial court within the
16 time and according to procedures applicable to motions for new
17 trial. If the trial court sustains such a motion the trial court
18 shall credit the jury award of punitive damages by the amount
19 found by the trial court to have been previously paid by the
20 defendant arising out of the same conduct and enter judgment
21 accordingly. If the defendant fails to establish entitlement to
22 a credit under the provisions of this section, or the trial court
23 finds from the evidence that the defendant's conduct out of which
24 the prior punitive damages award arose was not the same conduct
25 on which the imposition of punitive damages is based in the
26 pending action, or the trial court finds the defendant
27 unreasonably continued the conduct after acquiring actual
28 knowledge of the dangerous nature of such conduct, the trial

1 court shall disallow such credit, or, if the trial court finds
2 that the laws regarding punitive damages in the state in which
3 the prior award of punitive damages was entered substantially and
4 materially deviate from the law of the state of Missouri and that
5 the nature of such deviation provides good cause for disallowance
6 of the credit based on the public policy of Missouri, then the
7 trial court may disallow all or any part of the credit provided
8 by this section.

9 5. The credit allowable under this section shall not apply
10 to causes of action for libel, slander, assault, battery, false
11 imprisonment, criminal conversation, malicious prosecution or
12 fraud.

13 6. The doctrines of remittitur and additur, based on the
14 trial judge's assessment of the totality of the surrounding
15 circumstances, shall apply to punitive damage awards.

16 7. As used in this section, "punitive damage award" means
17 an award for punitive or exemplary damages or an award for
18 aggravating circumstances.

19 8. Discovery as to a defendant's assets shall be allowed
20 only after a finding by the trial court that it is more likely
21 than not that the plaintiff will be able to present a submissible
22 case to the trier of fact on the plaintiff's claim of punitive
23 damages.

24 516.105. All actions against physicians, hospitals,
25 dentists, registered or licensed practical nurses, optometrists,
26 podiatrists, pharmacists, chiropractors, professional physical
27 therapists, and any other entity providing health care services
28 and all employees of any of the foregoing acting in the course

1 and scope of their employment, for damages for malpractice,
2 negligence, error or mistake related to health care shall be
3 brought within two years from the date of occurrence of the act
4 of neglect complained of, except that:

5 (1) In cases in which the act of neglect complained of is
6 introducing and negligently permitting any foreign object to
7 remain within the body of a living person, the action shall be
8 brought within two years from the date of the discovery of such
9 alleged negligence, or from the date on which the patient in the
10 exercise of ordinary care should have discovered such alleged
11 negligence, whichever date first occurs; and

12 (2) In cases in which the act of neglect complained of is
13 the negligent failure to inform the patient of the results of
14 medical tests, the action for failure to inform shall be brought
15 within two years from the date of the discovery of such alleged
16 negligent failure to inform, or from the date on which the
17 patient in the exercise of ordinary care should have discovered
18 such alleged negligent failure to inform, whichever date first
19 occurs; except that, no such action shall be brought for any
20 negligent failure to inform about the results of medical tests
21 performed more than two years before August 28, 1999; and

22 (3) In cases in which the person bringing the action is a
23 minor less than eighteen years of age, such minor shall have
24 until his or her twentieth birthday to bring such action.

25
26 In no event shall any action for damages for malpractice, error,
27 or mistake be commenced after the expiration of ten years from
28 the date of the act of neglect complained of or for ten years

1 from a minor's [twentieth] eighteenth birthday, whichever is
2 later.

3 537.067. [1. In all tort actions for damages, in which
4 fault is not assessed to the plaintiff, the defendants shall be
5 jointly and severally liable for the amount of the judgment
6 rendered against such defendants.

7 2. In all tort actions for damages in which fault is
8 assessed to plaintiff the defendants shall be jointly and
9 severally liable for the amount of the judgment rendered against
10 such defendants except as follows:

11 (1) In all such actions in which the trier of fact assesses
12 a percentage of fault to the plaintiff, any party, including the
13 plaintiff, may within thirty days of the date the verdict is
14 rendered move for reallocation of any uncollectible amounts;

15 (2) If such a motion is filed the court shall determine
16 whether all or part of a party's equitable share of the
17 obligation is uncollectible from that party, and shall reallocate
18 any uncollectible amount among the other parties, including a
19 claimant at fault, according to their respective percentages of
20 fault;

21 (3) The party whose uncollectible amount is reallocated is
22 nonetheless subject to contribution and to any continuing
23 liability to the claimant on the judgment;

24 (4) No amount shall be reallocated to any party whose
25 assessed percentage of fault is less than the plaintiff's so as
26 to increase that party's liability by more than a factor of two;

27 (5) If such a motion is filed, the parties may conduct
28 discovery on the issue of collectibility prior to a hearing on

1 such motion;

2 (6) Any order of reallocation pursuant to this section
3 shall be entered within one hundred twenty days after the date of
4 filing such a motion for reallocation. If no such order is
5 entered within that time, such motion shall be deemed to be
6 overruled;

7 (7) Proceedings on a motion for reallocation shall not
8 operate to extend the time otherwise provided for post-trial
9 motion or appeal on other issues.

10
11 Any appeal on an order or denial of reallocation shall be taken
12 within the time provided under applicable rules of civil
13 procedure and shall be consolidated with any other appeal on
14 other issues in the case.

15 3. This section shall not be construed to expand or
16 restrict the doctrine of joint and several liability except for
17 reallocation as provided in subsection 2.] In all tort actions
18 for damages, a defendant shall be jointly and severally liable
19 for the amount of the economic damages portion of the judgement
20 rendered against defendants. A defendant may not be jointly or
21 severally liable for more than the percentage of noneconomic
22 damages or punitive damages for which fault is attributed to such
23 defendant by the trier of fact, except as provided in this
24 section with regard to noneconomic damages. In an action for
25 damages where there is a finding of liability for an intentional
26 tort, any defendant held liable for an intentional tort shall be
27 jointly and severally liable for the amount of the noneconomic
28 damages portion of the judgement rendered against such

1 defendants. In all tort actions for damages, a defendant may not
2 be jointly and severally liable for more than the percentage of
3 economic and noneconomic damages for which fault is attributed to
4 such defendant by the trier of fact if the plaintiff is found to
5 bear fifty-one percent or more of fault.

6 538.205. As used in sections 538.205 to 538.230, the
7 following terms shall mean:

8 (1) "Economic damages", damages arising from pecuniary harm
9 including, without limitation, medical damages, and those damages
10 arising from lost wages and lost earning capacity;

11 (2) "Equitable share", the share of a person or entity in
12 an obligation that is the same percentage of the total obligation
13 as the person's or entity's allocated share of the total fault,
14 as found by the trier of fact;

15 (3) "Future damages", damages that the trier of fact finds
16 will accrue after the damages findings are made;

17 (4) "Health care provider", any physician, hospital, health
18 maintenance organization, ambulatory surgical center, long-term
19 care facility including those licensed under chapter 198, RSMo,
20 dentist, registered or licensed practical nurse, optometrist,
21 podiatrist, pharmacist, chiropractor, professional physical
22 therapist, psychologist, physician-in-training, and any other
23 person or entity that provides health care services under the
24 authority of a license or certificate;

25 (5) "Health care services", any services that a health care
26 provider renders to a patient in the ordinary course of the
27 health care provider's profession or, if the health care provider
28 is an institution, in the ordinary course of furthering the

1 purposes for which the institution is organized. Professional
2 services shall include, but are not limited to, transfer to a
3 patient of goods or services incidental or pursuant to the
4 practice of the health care provider's profession or in
5 furtherance of the purposes for which an institutional health
6 care provider is organized;

7 (6) "Medical damages", damages arising from reasonable
8 expenses for necessary drugs, therapy, and medical, surgical,
9 nursing, x-ray, dental, custodial and other health and
10 rehabilitative services;

11 (7) "Noneconomic damages", damages arising from
12 nonpecuniary harm including, without limitation, pain, suffering,
13 mental anguish, inconvenience, physical impairment,
14 disfigurement, loss of capacity to enjoy life, and loss of
15 consortium but shall not include punitive damages;

16 (8) "Past damages", damages that have accrued when the
17 damages findings are made;

18 (9) "Physician employee", any person or entity who works
19 for hospitals for a salary or under contract and who is covered
20 by a policy of insurance or self-insurance by a hospital for acts
21 performed at the direction or under control of the hospital;

22 (10) "Punitive damages", damages intended to punish or
23 deter willful, wanton or malicious misconduct including exemplary
24 damages and damages for aggravating circumstances;

25 (11) "Self-insurance", a formal or informal plan of
26 self-insurance or no insurance of any kind.

27 538.210. 1. In any action against a health care provider
28 for damages for personal injury or death arising out of the

1 rendering of or the failure to render health care services, no
2 plaintiff shall recover more than [three] four hundred fifty
3 thousand dollars [per occurrence] for noneconomic damages [from
4 any one defendant as defendant is defined in subsection 2 of this
5 section] irrespective of the number of defendants.

6 2. ["Defendant" for purposes of sections 538.205 to 538.230
7 shall be defined as:

8 (1) A hospital as defined in chapter 197, RSMo, and its
9 employees and physician employees who are insured under the
10 hospital's professional liability insurance policy or the
11 hospital's self-insurance maintained for professional liability
12 purposes;

13 (2) A physician, including his nonphysician employees who
14 are insured under the physician's professional liability
15 insurance or under the physician's self-insurance maintained for
16 professional liability purposes;

17 (3) Any other health care provider having the legal
18 capacity to sue and be sued and who is not included in
19 subdivisions (1) and (2) of this subsection, including employees
20 of any health care providers who are insured under the health
21 care provider's professional liability insurance policy or
22 self-insurance maintained for professional liability purposes.]
23 Such limitation shall also apply to any other individual or
24 entity that is a defendant in a lawsuit brought against a health
25 care provider pursuant to this chapter, or that is a defendant in
26 any lawsuit that arises out of the rendering of or the failure to
27 render health care services.

28 3. No hospital or other health care provider shall be

1 liable to any plaintiff based on the actions or omissions of any
2 other entity or person who is not an employee of that hospital or
3 other health care provider.

4 [3.] 4. In any action against a health care provider for
5 damages for personal injury or death arising out of the rendering
6 of or the failure to render health care services, where the trier
7 of fact is a jury, such jury shall not be instructed by the court
8 with respect to the limitation on an award of noneconomic
9 damages, nor shall counsel for any party or any person providing
10 testimony during such proceeding in any way inform the jury or
11 potential jurors of such limitation.

12 [4.] 5. Beginning on August 28, 2013, the limitation on
13 awards for noneconomic damages provided for in this section shall
14 be increased or decreased on an annual basis effective January
15 first of each year in accordance with the Implicit Price Deflator
16 for Personal Consumption Expenditures as published by the Bureau
17 of Economic Analysis of the United States Department of Commerce.
18 The current value of the limitation shall be calculated by the
19 director of the department of insurance, who shall furnish that
20 value to the secretary of state, who shall publish such value in
21 the Missouri Register as soon after each January first as
22 practicable, but it shall otherwise be exempt from the provisions
23 of section 536.021, RSMo.

24 6. For purposes of sections 538.205 to 538.230, any spouse
25 claiming damages for loss of consortium of their spouse shall be
26 considered to be the same plaintiff as their spouse.

27 [5.] 7. Any provision of law or court rule to the contrary
28 notwithstanding, an award of punitive damages against a health

1 care provider governed by the provisions of sections 538.205 to
2 538.230 shall be made only upon a showing by a plaintiff that the
3 health care provider demonstrated willful, wanton or malicious
4 misconduct with respect to his actions which are found to have
5 injured or caused or contributed to cause the damages claimed in
6 the petition.

7 8. For purposes of sections 538.205 to 538.230, all
8 individuals and entities asserting a claim for a wrongful death
9 pursuant to section 537.080, RSMo, shall be considered to be one
10 plaintiff.

11 538.213. 1. Any physician licensed pursuant to chapter
12 334, RSMo, or dentist licensed pursuant to chapter 332, RSMo, or
13 hospital, or employee of a hospital as defined in section
14 197.020, RSMo, or other health care provider as defined in
15 section 538.205, who renders any care or assistance in a hospital
16 shall not be held liable for more than two hundred thousand
17 dollars for noneconomic damages, exclusive of interest computed
18 from the date of judgment, to or for the benefit of any claimant
19 arising out of any act or omission in rendering that care or
20 assistance when:

21 (1) The care or assistance is rendered in a hospital
22 emergency department, or is care rendered within twenty-four
23 hours of receiving care in the emergency department;

24 (2) The care or assistance rendered is necessitated by a
25 traumatic injury demanding immediate medical attention for which
26 the patient enters the hospital for care in its emergency
27 department or trauma center; and

28 (3) The care or assistance is rendered in good faith and in

1 a manner not amounting to reckless, willful, or wanton conduct.

2 2. The limitation on liability provided pursuant to this
3 section does not apply to any act or omission in rendering care
4 or assistance which:

5 (1) Occurs after the patient is stabilized and is capable
6 of receiving medical treatment as a nonemergency patient; or

7 (2) Is unrelated to the original traumatic injury.

8 3. There shall be a rebuttable presumption that the medical
9 condition was the result of the original traumatic injury.

10 4. In considering whether an act or omission constitutes
11 reckless, willful, or wanton conduct, the court shall consider
12 the following:

13 (1) The extent or serious nature of the prevailing
14 circumstances;

15 (2) The lack of time or ability to obtain appropriate
16 consultation;

17 (3) The lack of a prior medical relationship with the
18 patient;

19 (4) The inability to obtain an appropriate medical history
20 of the patient; and

21 (5) The time constraints imposed by coexisting emergencies.

22 5. For purposes of this section "Traumatic injury" shall
23 mean any acute injury or illness which, according to standardized
24 criteria for triage in the field, involves a significant risk of
25 death or the precipitation of complications or disabilities.

26 538.220. 1. In any action against a health care provider
27 for damages for personal injury or death arising out of the
28 rendering of or the failure to render health care services, past

1 damages shall be payable in a lump sum.

2 2. At the request of any party to such action made prior to
3 the entry of judgment, the court shall include in the judgment a
4 requirement that future damages be paid in whole or in part in
5 periodic or installment payments if the total award of damages in
6 the action exceeds one hundred thousand dollars. Any judgment
7 ordering such periodic or installment payments shall specify a
8 future medical periodic payment schedule, which shall include:
9 the recipient, the amount of each payment, the interval between
10 payments, and the number of payments. The duration of the future
11 medical payment schedule shall be for a period of time no less
12 than the evidence of life expectancy presented at trial. The
13 amount of each of the future medical periodic payments shall be
14 determined by dividing the total amount of future medical damages
15 by the number of future medical periodic payments. The court
16 shall apply interest on such future periodic payments at a per
17 annum interest rate no greater than the coupon issue yield
18 equivalent, as determined by the Federal Reserve Board, of the
19 average accepted auction price for the last auction of fifty-two
20 week United States Treasury bills settled immediately prior to
21 the date of the judgment. The judgment shall state the
22 applicable interest rate. The parties shall be afforded the
23 opportunity to agree on the manner of payment of future damages,
24 including the rate of interest, if any, to be applied, subject to
25 court approval. However, in the event the parties cannot agree,
26 the unresolved issues shall be submitted to the court for
27 resolution, either with or without a post-trial evidentiary
28 hearing which may be called at the request of any party or the

1 court. If a defendant makes the request for payment pursuant to
2 this section, such request shall be binding only as to such
3 defendant and shall not apply to or bind any other defendant.

4 3. As a condition to authorizing periodic payments of
5 future damages, the court may require a judgment debtor who is
6 not adequately insured to post security or purchase an annuity
7 adequate to assure full payment of such damages awarded by the
8 judgment. Upon termination of periodic payments of future
9 damages, the court shall order the return of this security or so
10 much as remains to the judgment debtor.

11 4. If a plaintiff and his attorney have agreed that
12 attorney's fees shall be paid from the award, as part of a
13 contingent fee arrangement, it shall be presumed that the fee
14 will be paid at the time the judgment becomes final. If the
15 attorney elects to receive part or all of such fees in periodic
16 or installment payments from future damages, the method of
17 payment and all incidents thereto shall be a matter between such
18 attorney and the plaintiff and not subject to the terms of the
19 payment of future damages, whether agreed to by the parties or
20 determined by the court.

21 5. Upon the death of a judgment creditor, the right to
22 receive payments of future damages, other than future medical
23 damages, being paid by installments or periodic payments will
24 pass in accordance with the Missouri probate code unless
25 otherwise transferred or alienated prior to death. Payment of
26 future medical damages will continue to the estate of the
27 judgment creditor only for as long as necessary to enable the
28 estate to satisfy medical expenses of the judgment creditor that

1 were due and owing at the time of death, which resulted directly
2 from the injury for which damages were awarded, and do not exceed
3 the dollar amount of the total payments for such future medical
4 damages outstanding at the time of death.

5 6. Nothing in this section shall prevent the parties from
6 contracting and agreeing to settle and resolve the claim for
7 future damages. If such an agreement is reached by the parties,
8 the future periodic payment schedule will become moot.

9 538.225. 1. In any action against a health care provider
10 for damages for personal injury or death on account of the
11 rendering of or failure to render health care services, the
12 plaintiff or [his] the plaintiff's attorney shall file an
13 affidavit with the court stating that he or she has obtained the
14 written opinion of a legally qualified health care provider which
15 states that the defendant health care provider failed to use such
16 care as a reasonably prudent and careful health care provider
17 would have under similar circumstances and that such failure to
18 use such reasonable care directly caused or directly contributed
19 to cause the damages claimed in the petition. The written
20 opinion shall be subject to in camera review at the request of
21 any defendant for a determination of whether the health care
22 provider offering such an opinion meets the qualifications set
23 forth in subsection 6 of this section.

24 2. The affidavit shall state the qualifications of such
25 health care providers to offer such opinion.

26 3. A separate affidavit shall be filed for each defendant
27 named in the petition.

28 4. Such affidavit shall be filed no later than ninety days

1 after the filing of the petition unless the court, for good cause
2 shown, orders that such time be extended for a period of time not
3 to exceed an additional ninety days.

4 5. If the plaintiff or his attorney fails to file such
5 affidavit the court [may] shall, upon motion of any party,
6 dismiss the action against such moving party without prejudice.

7 6. As used in this section, the term "legally qualified
8 health care provider" means a health care provider licensed in
9 this state or any other state in the same profession and who
10 holds current and active board-certification in substantially the
11 same specialty as the defendant.

12 538.227. 1. The portion of statements, writings, or
13 benevolent gestures expressing sympathy or a general sense of
14 benevolence relating to the pain, suffering, or death of a person
15 and made to that person or to the family of that person shall be
16 inadmissible as evidence of an admission of liability in a civil
17 action. A statement of fault, however, which is part of, or in
18 addition to, any of the provisions of this subsection shall not
19 be inadmissible pursuant to this section.

20 2. For the purposes of this section the following terms
21 mean:

22 (1) "Benevolent gestures", actions which convey a sense of
23 compassion or commiseration emanating from humane impulses;

24 (2) "Family", the spouse, parent, grandparent, stepmother,
25 stepfather, child, grandchild, brother, sister, half brother,
26 half sister, lifetime partner or significant other, adopted
27 children of a parent, or spouse's parents of an injured party.

28 538.300. The provisions of sections 260.552, RSMo, 490.715,

1 RSMo, 509.050, RSMo, [510.263, RSMo,] 537.067, 537.068, 537.117,
2 537.675, and 537.760 to 537.765, RSMo, [and subsection 2 of
3 section 408.040, RSMo,] shall not apply to actions under sections
4 538.205 to 538.230.

5 Section 1. If any provision of this act is found by a court
6 of competent jurisdiction to be invalid or unconstitutional it is
7 the stated intent of the legislature that the legislature would
8 have approved the remaining portions of the act, and the
9 remaining portions of the act shall remain in full force and
10 effect.

11 Section 2. The provisions of sections 408.040, 508.010,
12 510.263, 516.105, 537.067, 537.072, 538.205, 538.210, 538.213,
13 538.225, 538.227, and 538.301 shall apply to all causes of action
14 filed after August 28, 2004.

15 Section 3. At any time prior to the commencement of a
16 trial, if a plaintiff or defendant is either added or removed
17 from a complaint filed in any court in the state of Missouri
18 which would have, if originally added or removed to the initial
19 petition, altered the determination of venue under section
20 508.010, RSMo, then the judge shall order it be commenced in a
21 proper forum or transfer the case to a proper forum pursuant to
22 section 476.410, RSMo.

23 [355.176. 1. A corporation's registered agent is
24 the corporation's agent for service of process, notice,
25 or demand required or permitted by law to be served on
26 the corporation.

27 2. If a corporation has no registered agent, or
28 the agent cannot with reasonable diligence be served,
29 the corporation may be served by registered or
30 certified mail, return receipt requested, addressed to
31 the secretary of the corporation at its principal
32 office shown in the most recent annual report filed
33 pursuant to section 355.856. Service is perfected

1 under this subsection on the earliest of:

- 2 (1) The date the corporation receives the mail;
- 3 (2) The date shown on the return receipt, if
- 4 signed on behalf of the corporation; or
- 5 (3) Five days after its deposit in the United
- 6 States mail, if mailed and correctly addressed with
- 7 first class postage affixed.】

8
9 【508.040. Suits against corporations shall be
10 commenced either in the county where the cause of
11 action accrued, or in case the corporation defendant is
12 a railroad company owning, controlling or operating a
13 railroad running into or through two or more counties
14 in this state, then in either of such counties, or in
15 any county where such corporations shall have or
16 usually keep an office or agent for the transaction of
17 their usual and customary business.】

18
19 【508.070. 1. Suit may be brought against any
20 motor carrier which is subject to regulation pursuant
21 to chapter 390, RSMo, in any county where the cause of
22 action may arise, in any town or county where the motor
23 carrier operates, or judicial circuit where the cause
24 of action accrued, or where the defendant maintains an
25 office or agent, and service may be had upon the motor
26 carrier whether an individual person, firm, company,
27 association, or corporation, by serving process upon
28 the director, division of motor carrier and railroad
29 safety.

30 2. When a summons and petition are served upon
31 the director, division of motor carrier and railroad
32 safety, naming any motor carrier, either a resident or
33 nonresident of this state, as a defendant in any
34 action, the director shall immediately mail the summons
35 and petition by registered United States mail to the
36 motor carrier at the business address of the motor
37 carrier as it appears upon the records of the
38 commission. The director shall request from the
39 postmaster a return receipt from the motor carrier to
40 whom the registered letter enclosing copy of summons
41 and petition is mailed. The director shall inform the
42 clerk of the court out of which the summons was issued
43 that the summons and petition were mailed to the motor
44 carrier, as herein described, and the director shall
45 forward to the clerk the return receipt showing
46 delivery of the registered letter.

47 3. Each motor carrier not a resident of this
48 state and not maintaining an office or agent in this
49 state shall, in writing, designate the director as its
50 authorized agent upon whom legal service may be had in
51 all actions arising in this state from any operation of

1 the motor vehicle pursuant to authority of any
2 certificate or permit, and service shall be had upon
3 the nonresident motor carrier as herein provided.

4 4. There shall be kept in the office of the
5 director, division of motor carrier and railroad safety
6 a permanent record showing all process served, the name
7 of the plaintiff and defendant, the court from which
8 the summons issued, the name and title of the officer
9 serving the same, the day and the hour of service, the
10 day and date on which petition and summons were
11 forwarded to the defendant or defendants by registered
12 letter, the date on which return receipt is received by
13 the director, and the date on which the return receipt
14 was forwarded to the clerk of the court out of which
15 the summons was issued.】
16

17 【508.120. No defendant shall be allowed a change
18 of venue and no application by a defendant to
19 disqualify a judge shall be granted unless the
20 application therefor is made before the filing of his
21 answer to the merits, except when the cause for the
22 change of venue or disqualification arises, or
23 information or knowledge of the existence thereof first
24 comes to him, after the filing of his answer in which
25 case the application shall state the time when the
26 cause arose or when applicant acquired information and
27 knowledge thereof, and the application must be made
28 within five days thereafter.】
29
30